

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF NEVADA
3

4 Gerold Esparza Centeno,

Case No. 2:23-cv-01938-JAD-NJK

5 Plaintiff

6 v.

7 Joe Lombardo, et. al.,

**Order Dismissing
and Closing Case**

8 Defendants

9 Plaintiff Gerold Esparza Centeno brings this civil-rights lawsuit to redress constitutional
10 violations that he claims he suffered while detained at Clark County Detention Center. On July
11 30, 2024, this court dismissed plaintiff's claims with leave to amend by August 30, 2024.¹ The
12 court warned the plaintiff that this case would be dismissed and closed if he failed to file an
13 amended complaint by that deadline.²

14 Centeno appealed the court's screening order, and his appeal was denied.³ The Court
15 then extended the time for him to file an amended complaint to October 4, 2024, and reminded
16 plaintiff that this case would be subject to dismissal if he failed to file an amended complaint by
17 that extended deadline.⁴ Plaintiff neither filed an amended complaint by that deadline nor
18 moved for an extension of time to do so.

19 The law permits a district court to dismiss an action based on a party's failure to comply
20

21 _____
22 ¹ ECF No. 19.

23 ² *Id.* at 8.

³ ECF Nos. 20, 23.

⁴ ECF No. 24.

1 with a court order.⁵ In determining whether to dismiss an action on this ground, the court must
 2 consider: (1) the public’s interest in expeditious resolution of litigation; (2) the court’s need to
 3 manage its docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring
 4 disposition of cases on their merits; and (5) the availability of less drastic alternatives.⁶

5 The first two factors, the public’s interest in expeditiously resolving this litigation and the
 6 court’s interest in managing its docket, weigh in favor of dismissal of the plaintiff’s claims. The
 7 third factor, risk of prejudice to defendants, also weighs in favor of dismissal because a
 8 presumption of injury arises from the occurrence of unreasonable delay in filing a pleading
 9 ordered by the court or prosecuting an action.⁷ The fourth factor—the public policy favoring
 10 disposition of cases on their merits—is greatly outweighed by the factors favoring dismissal.

11 The fifth factor requires the court to consider whether less drastic alternatives can be used
 12 to correct the party’s failure that brought about the court’s need to consider dismissal.⁸ Courts
 13 “need not exhaust every sanction short of dismissal before finally dismissing a case, but must
 14 explore possible and meaningful alternatives.”⁹ Because this action cannot proceed until and
 15 unless plaintiff files an amended complaint, the only alternative is to enter a second order setting
 16

17 ⁵ See *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260–61 (9th Cir. 1992) (dismissal for failure to comply
 with an order requiring amendment of complaint).

18 ⁶ *In re Phenylpropanolamine Prod. Liab. Litig.*, 460 F.3d 1217, 1226 (9th Cir. 2006) (quoting
 19 *Malone v. U.S. Postal Serv.*, 833 F.2d 128, 130 (9th Cir. 1987)).

⁷ See *Anderson v. Air West*, 542 F.2d 522, 524 (9th Cir. 1976).

20 ⁸ *Yourish v. Cal. Amplifier*, 191 F.3d 983, 992 (9th Cir. 1999) (explaining that considering less
 21 drastic alternatives *before* the party has disobeyed a court order does not satisfy this factor);
 22 accord *Pagtalunan v. Galaza*, 291 F.3d 639, 643 & n.4 (9th Cir. 2002) (explaining that “the
 23 persuasive force of” earlier Ninth Circuit cases that “implicitly accepted pursuit of less drastic
 alternatives prior to disobedience of the court’s order as satisfying this element[.]” i.e., like the
 “initial granting of leave to amend coupled with the warning of dismissal for failure to
 comply[.]” have been “eroded” by *Yourish*).

⁹ *Henderson v. Duncan*, 779 F.2d 1421, 1424 (9th Cir. 1986).

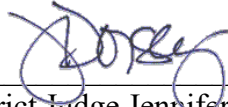
1 another deadline. But the reality of repeating an ignored order is that it often only delays the
2 inevitable and squanders finite resources along the way. The circumstances here do not indicate
3 that this case will be an exception: there is no hint that Centeno needs additional time nor
4 evidence that he did not receive the court's order. Setting another deadline is not a meaningful
5 alternative given these circumstances. So the fifth factor favors dismissal.

6 Having thoroughly weighed these dismissal factors, I find that they weigh in favor of
7 dismissal. IT IS THEREFORE ORDERED that **THIS ACTION IS DISMISSED** for failure to
8 file an amended complaint by the court-ordered deadline, leaving no claims pending. The Clerk
9 of Court is directed to **ENTER JUDGMENT** accordingly and **CLOSE THIS CASE. No other**
10 **documents may be filed in this now-closed case.**

11 IT IS FURTHER ORDERED that the application to proceed *in forma pauperis* [ECF No.
12 **18]** is **GRANTED**. This status doesn't relieve plaintiff of his obligation to pay the full \$350
13 filing fee under the statute; it just means that he can do it in installments. And the full \$350
14 filing fee remains due and owing in full even though this case is being dismissed.

15 To ensure that the plaintiff pays the full filing fee, IT IS FURTHER ORDERED that the
16 Nevada Department of Corrections must pay to the Clerk of the United States District Court,
17 District of Nevada, 20% of the preceding month's deposits to the account of **Gerold Esparza**
18 **Centeno, # 1230933** (in months that the account exceeds \$10.00) until the full \$350 filing fee
19 has been paid for this action. The Clerk is directed to SEND a copy of this order (1) to the
20 Finance Division of the Clerk's Office and (2) to the attention of **Chief of Inmate Services for**
21 **the Nevada Department of Corrections** at formapauperis@doc.nv.gov.

22 Dated: October 30, 2024

23 
U.S. District Judge Jennifer A. Dorsey